

## § 1.871-14

## 26 CFR Ch. I (4-1-14 Edition)

Business income (nonresidence period) .....	2,500	
Total taxable income (without deduction for personal exemptions) .....		4,250
Less deduction for personal exemptions:		
Taxpayer .....	650	
Wife and 3 children (4×\$650, but not to exceed \$1,750) .....	1,750	2,400
Taxable income .....		1,850

(f) *Effective date.* This section shall apply for taxable years beginning after December 31, 1966. There are no corresponding rules in this part for taxable years beginning before January 1, 1967.

[T.D. 7332, 39 FR 44226, Dec. 23, 1974, as amended by T.D. 7670, 45 FR 6928, Jan. 31, 1980]

### § 1.871-14 Rules relating to repeal of tax on interest of nonresident alien individuals and foreign corporations received from certain portfolio debt investments.

(a) *General rule.* No tax shall be imposed under section 871(a)(1)(A), 871(a)(1)(C), 881(a)(1) or 881(a)(3) on any portfolio interest as defined in sections 871(h)(2) and 881(c)(2) received by a foreign person. But see section 871(b) or 882(a) if such interest is effectively connected with the conduct of a trade or business within the United States.

(b) [Reserved] For further guidance, see § 1.871-14T(b).

(c) *Rules concerning obligations in registered form—(1) In general—(i) Obligation in registered form.* For purposes of this section, an obligation is in registered form only as provided in this paragraph (c)(1)(i). The conditions for an obligation to be considered in registered form are identical to the conditions described in § 5f.103-1 of this chapter. Therefore, an obligation that would be an obligation in registered form except for the fact that it can be converted at any time in the future into an obligation that is not in registered form shall not be an obligation in registered form. An obligation that is not in registered form by reason of the preceding sentence may nevertheless be an obligation in registered form, but only after the possibility of conversion is terminated. An obligation that is not in registered form and can be converted into an obligation that would meet the requirements of this paragraph (c)(1)(i)

for being in registered form shall be considered in registered form only after the conversion is effected. For purposes of this section, an obligation is convertible if the obligation can be transferred by any means not described in § 5f.103-1(c) of this chapter. An obligation is treated as an obligation in registered form if—

(A) The obligation is registered as to both principal and any stated interest with the issuer (or its agent) and transfer of the obligation may be effected only by surrender of the old instrument, and either the reissuance by the issuer of the old instrument to the new holder or the issuance by the issuer of a new instrument to the new holder;

(B) The right to the principal of, and stated interest on, the obligation may be transferred only through a book entry system maintained by the issuer (or its agent) described in this paragraph (c)(1)(i)(B). An obligation shall be considered transferable through a book entry system if the ownership of an interest in the obligation, is required to be reflected in a book entry, whether or not physical securities are issued. A book entry is a record of ownership that identifies the owner of an interest in the obligation; or

(C) It is registered as to both principal and any stated interest with the issuer (or its agent) and may be transferred by way of either of the methods described in paragraph (c)(1)(i) (A) or (B) of this section.

(ii) *Requirements for portfolio interest qualification in the case of an obligation in registered form.* Interest (including original issue discount) received on an obligation that is in registered form qualifies as portfolio interest only if—

(A) The interest is paid on an obligation issued after July 18, 1984;

(B) The interest would be subject to tax under section 871(a)(1)(A), 871(a)(1)(C), 881(a)(1) or 881(a)(3) but for section 871(h) or 881(c);

(C) A United States (U.S.) person otherwise required to deduct and withhold tax under chapter 3 of the Internal Revenue Code (Code) receives a statement that meets the requirements of section 871(h)(5) that the beneficial owner of the obligation is not a U.S. person; and

(D) An exception under section 871(h) or 881(c) does not apply.

(2) through (3)(i) [Reserved] For further guidance, see § 1.871-14T(c)(2) through (c)(3)(i).

(ii) *Example.* The following example illustrates the rules of this paragraph (c)(3) and their coordination with § 1.1441-1(b)(7):

*Example.* A is a withholding agent who, on October 12, 2001, pays interest on a registered obligation to B, a foreign corporation. B is a calendar year taxpayer, engaged in the conduct of a trade or business in the United States, and is, therefore, required to file an annual income tax return on Form 1120F. The interest, however, is not effectively connected with B's U.S. trade or business. On the date of payment, B has not furnished, and A cannot associate the payment with documentation for B. However, A does not withhold under section 1442, even though, under § 1.1441-1(b)(3)(iii)(A), A should presume that B is a foreign person, because A's communications with B are mailed to an address in a foreign country. Assuming that B files a return for its taxable year ending December 31, 2001, and that its statute of limitations period with regard to that year expires on June 15, 2005, the interest paid on October 12, 2001, may qualify as portfolio interest only if B provides appropriate documentation to A on or before June 15, 2005. If B does not provide the documentation on or before June 15, 2005, and does not pay the tax, A is liable for the tax under section 1463, even if B provides the documentation to A after June 15, 2005. Therefore, the provisions in § 1.1441-1(b)(7), regarding late-received documentation would not help A avoid liability for tax under section 1463 even if the documentation is furnished within the statute of limitations period of A. This is because, in a case involving interest, the documentation received within the limitations period of the beneficial owner serves as a condition for the interest to qualify as portfolio interest. When documentation is received after the expiration of the beneficial owner's limitations period, the interest can no longer qualify as portfolio interest. On the other hand, A could rely on documentation that it receives after the expiration of B's limitations period to establish B's right to a reduced rate of withholding under an applicable income tax treaty (since, in such a case, a claim of treaty benefits is not conditioned upon providing documentation prior to the expiration of the beneficial owner's limitations period).

(4) [Reserved] For further guidance, see § 1.871-14T(c)(4).

(d) *Application of repeal of 30-percent withholding to pass-through certificates—*

(1) *In general.* Interest received on a pass-through certificate qualifies as portfolio interest under section 871(h)(2) or 881(c)(2) if the interest satisfies the conditions described in paragraph (b)(1), (c)(1), or (e) of this section without regard to whether any obligation held by the fund or trust to which the pass-through certificate relates is described in paragraph (b)(1), (c)(1)(ii), or (e) of this section. This paragraph (d)(1) applies only to payments made to the holder of the pass-through certificate from the trustee of the pass-through trust and does not apply to payments made to the trustee of the pass-through trust. For example, a mortgage pass-through certificate in bearer form must meet the requirements set forth in paragraph (b)(1) of this section, but the obligations held by the fund or trust to which the mortgage pass-through certificate relates need not meet the requirements set forth in paragraph (b)(1), (c)(1)(ii), or (e) of this section. However, for purposes of paragraphs (b)(1), (c)(1)(ii), and (e) of this section and section 127 of the Tax Reform Act of 1984, a pass-through certificate will be considered as issued after July 18, 1984, only to the extent that the obligations held by the fund or trust to which the pass-through certificate relates are issued after July 18, 1984.

(2) *Interest in REMICs.* Interest received on a regular or residual interest in a REMIC qualifies as portfolio interest under section 871(h)(2) or 881(c)(2) if the interest satisfies the conditions described in paragraph (b)(1), (c)(1)(ii), or (e) of this section. For purposes of paragraph (b)(1), (c)(1)(ii), or (e) of this section, interest on a regular interest in a REMIC is not considered interest on any mortgage obligations held by the REMIC. The foregoing rule, however, applies only to payments made to the holder of the regular interest from the REMIC and does not apply to payments made to the REMIC. For purposes of paragraph (b)(1), (c)(1)(ii), or (e) of this section, interest on a residual interest in a REMIC is considered to be interest on or with respect to the obligations held by the REMIC, and not on or with respect to the residual interest. For purposes of paragraphs (b)(1), (c)(1)(ii), and (e) of this section

and section 127 of the Tax Reform Act of 1984, a residual interest in a REMIC will be considered as issued after July 18, 1984, only to the extent that the obligations held by the REMIC are issued after July 18, 1984, but a regular interest in a REMIC will be considered as issued after July 18, 1984, if the regular interest was issued after July 18, 1984, without regard to the date on which the mortgage obligations held by the REMIC were issued.

(3) *Date of issuance.* In general, a mortgage pass-through certificate will be considered to have been issued after July 18, 1984, if all of the mortgages held by the fund or trust were issued after July 18, 1984. If some of the mortgages held by the fund or trust were issued before July 19, 1984, then the portion of any interest payment which represents interest on those mortgages shall not be considered to be portfolio interest. The preceding sentence shall not apply, however, if all of the following conditions are satisfied:

(i) The mortgage pass-through certificate is issued after December 31, 1986;

(ii) Payment of the mortgage pass-through certificate is guaranteed by, and a guarantee commitment has been issued by, an entity that is independent from the issuer of the underlying obligation;

(iii) The guarantee commitment with respect to the mortgage pass-through certificate cannot have been issued more than 14 months prior to the date on which the mortgage pass-through certificate is issued; and

(iv) The fund or trust to which the mortgage pass-through certificate relates cannot contain mortgage obligations on which the first scheduled monthly payment of principal and interest was made more than twelve months before the date on which the guarantee commitment was made.

(e) *Foreign-targeted registered obligations*—(1) [Reserved] For further guidance, see § 1.871-14T(e)(1).

(2) *Definition of a foreign-targeted registered obligation.* An obligation is considered to be targeted to foreign markets for purposes of paragraph (e)(1) of this section if it is sold (or resold in connection with its original issuance) only to foreign persons (or to foreign

branches of United States financial institutions described in section 871(h)(5)(B)) in accordance with procedures similar to those prescribed in § 1.163-5(c)(2)(i) (A), (B), or (D). However, the provisions of that section that require an obligation to be offered for sale or resale in connection with its original issuance only outside the United States do not apply with respect to registered obligations offered for sale through a public auction. Similarly, the provisions of that section that require delivery to be made outside the United States do not apply to registered obligations offered for sale through a public auction if the obligations are considered to be in registered form by virtue of the fact that they may be transferred only through a book entry system. The obligation, if evidenced by a physical document other than a confirmation receipt, must contain on its face a legend indicating that it has been sold (or resold in connection with its original issuance) in accordance with those procedures.

(3) *Documentation.* A certificate described in paragraph (e)(3)(i) of this section is required if the United States person otherwise required to deduct and withhold tax (the withholding agent) pays interest to a financial institution described in section 871(h)(5)(B) or to a member of a clearing organization, which member is the beneficial owner of the obligation. The documentation described in paragraph (e)(3)(ii) of this section is required if a withholding agent pays interest to a beneficial owner that is neither a financial institution described in section 871(h)(5)(B) nor a member of a clearing organization.

(i) *Interest paid to a financial institution or a member of a clearing organization*—(A) *Requirement of a certificate*—(1) If the withholding agent pays interest to a financial institution described in section 871(h)(5)(B) or to a member of a clearing organization, which member is the beneficial owner of the obligation, the withholding agent must receive a certificate which states that, beginning at the time the last preceding certificate under this paragraph (e)(3)(i) was

provided and while the financial institution or clearing organization member has held the obligation, with respect to each foreign-targeted registered obligation which has been held by the person providing the certificate at any time since the provision of such last preceding certificate, either—

(i) The beneficial owner of the obligation has not been a United States person on each interest payment date; or

(ii) If the person providing the certificate is a financial institution which is holding or has held an obligation on behalf of the beneficial owner, the beneficial owner of the obligation has been a United States person on one or more interest payment dates (identifying such date or dates), and the person making the certification has forwarded or will forward the appropriate United States beneficial ownership notification to the withholding agent in accordance with the provisions of paragraph (e)(4) of this section.

(2) The person providing the certificate need not state the foregoing where no previous certificate has been required to be provided by the payee to the withholding agent under this paragraph (e)(3)(i).

(B) *Additional representations.* Whether or not a previous certificate has been required to be provided with respect to the obligation, each certificate furnished pursuant to the provisions in this paragraph (e)(3)(i) must further state that, for each foreign-targeted registered obligation held and every other such obligation to be acquired and held by the person providing the certificate during the period beginning on the date of the certificate and ending on the date the next certificate is required to be provided, the beneficial owner of the obligation will not be a United States person on each interest payment date while the financial institution or clearing organization member holds the obligation and that, if the person providing the certificate is a financial institution which is holding or will be holding the obligation on behalf of a beneficial owner, such person will provide a United States beneficial ownership notification to the withholding agent (and a clearing organization that is not a withholding agent where a member organization is required by

this paragraph (e)(3) to furnish the clearing organization with a statement) in accordance with paragraph (e)(4) of this section in the event such certificate (or statement in the case of a statement provided by a member organization to a clearing organization that is not a withholding agent) is or becomes untrue with respect to any obligation. A clearing organization is an entity which is in the business of holding obligations for member organizations and transferring obligations among such members by credit or debit to the account of a member without the necessity of physical delivery of the obligation.

(C) *Obligation must be identified.* The certificate described in paragraph (e)(3)(ii)(A) of this section must identify the obligation or obligations with respect to which it is given, except where the certification is given with respect to an obligation that has not been acquired at the time the certification is made. An obligation is identified if it or the larger issuance of which it is a part is described on a list (e.g., \$5 million principal amount of 12% debentures of ABC Savings and Loan Association due February 25, 1995, \$3 million principal amount of 10% U.S. Treasury notes due May 28, 1990) of all registered obligations targeted to foreign markets held by or on behalf of the person providing the certificate and the list is attached to, and incorporated by reference into, the certificate. The certificate must identify and provide the address of the person furnishing the certificate.

(D) *Payment to a depository of a clearing organization.* If the withholding agent pays interest to a depository of a clearing organization, then the clearing organization must provide the certificate described in this paragraph (e)(3)(i) to the withholding agent. Any certificate that is provided by a clearing organization must state that the clearing organization has received a statement from each member which complies with the provisions of this paragraph (e)(3)(i) and of paragraph (e)(4) of this section (as if the clearing organization were the withholding agent and regardless of whether the member is a financial institution described in section 871(h)(5)(B)).

(E) *Statement in lieu of Form W-8.* Subject to the requirements set out in paragraph (e)(4) of this section, a certificate or statement in the form described in this paragraph (e)(3)(i), in conjunction with the next annual certificate or statement, will serve as the certificate that may be provided in lieu of a Form W-8 with respect to interest on all foreign-targeted registered obligations held by the person making the certification or statement and which is paid to such person within the period beginning on the date of the certificate and ending on the date the next certificate is required to be provided.

(F) *Electronic transmission.* The certificate described in this paragraph (e)(3)(i) may be provided electronically under the terms and conditions of § 1.163-5(c)(2)(i)(D)(3)(ii).

(ii) *Payment to a person other than a financial institution or member of a clearing organization.* If the withholding agent pays interest to the beneficial owner of an obligation that is neither a financial institution described in section 871(h)(5)(B) nor a member of a clearing organization, then such owner must provide the withholding agent a statement described in paragraph (c)(1)(ii)(C) of this section.

(4) *Applicable procedures regarding documentation—(i) Procedures applicable to certificates required under paragraph (e)(3)(i) of this section—(A) Time for providing certificate.* Where no previous certificate for foreign-targeted registered obligations has been provided to the withholding agent by the person providing the certificate under paragraph (e)(3)(i) of this section, such certificate must be provided within the period beginning 90 days prior to the first interest payment date on which the person holds a foreign-targeted registered obligation. The withholding agent may, in its discretion, withhold under section 1441(a), 1442(a), or 1443 if the certificate is not received by the date 30 days prior to the interest payment. Thereafter the certificate must be filed within the period beginning on January 15 and ending January 31 of each year. If a certificate provided pursuant to the first sentence of this paragraph (e)(4)(i)(A) is provided during the period beginning on January 15 and ending on January 31 of any year, then

no other certificate need be provided during such period in such year.

(B) *Change of status notification on Form W-9.* If, on any interest payment date after the obligation was acquired by the person making the certification, the beneficial owner of the obligation is a U.S. person, then the person to whom the withholding agent pays interest must furnish the withholding agent with a U.S. beneficial ownership notification within 30 days after such interest payment date. A U.S. beneficial ownership notification must include a statement that the beneficial owner of the obligation has been a U.S. person on an interest payment date (identifying such date), that such owner has provided to the person providing the notification a Form W-9 (or a substitute form that is substantially similar to Form W-9 and completed under penalties of perjury), and that the person providing the notification has been and will be complying with the information reporting requirements of section 6049, if applicable.

(C) *Alternative notification statement.* Where the person providing the notification described in paragraph (e)(4)(i)(B) of this section is neither a controlled foreign corporation within the meaning of section 957(a), nor a foreign corporation 50-percent or more of the gross income of which from all sources for the three-year period ending with the close of the taxable year preceding the date of the statement was effectively connected with the conduct of trade or business in the United States, such person must attach to the notification a copy of the Form W-9 (or substitute form that is substantially similar to Form W-9 and completed under penalties of perjury) provided by the beneficial owner. When a person that provides the U.S. beneficial ownership notification does not attach to it a copy of such Form W-9 (or substitute form that is substantially similar to Form W-9 and completed under penalties of perjury), such person must state that it is either a controlled foreign corporation within the meaning of section 957(a), or a foreign corporation 50-percent or more of the gross income of which from all sources for the three-year period ending with the close of its taxable year preceding the date of the

statement was effectively connected with the conduct of a trade or business in the United States. A withholding agent that receives a Form W-9 (or a substitute form that is substantially similar to Form W-9 and completed under penalties of perjury) must send a copy of such form to the IRS, at such address as the IRS shall indicate, within 30 days after receiving it and must attach a statement that the Form W-9 or substitute form was provided pursuant to this paragraph (e)(4) with respect to a U.S. person that has owned a foreign-targeted registered obligation on one or more interest payment dates.

(D) *Failure to provide notification.* If either a Form W-9 (or a substitute form that is substantially similar to a Form W-9 and completed under penalties of perjury) or the statement described in paragraph (e)(4)(i)(C) of this section is not attached to the U.S. beneficial ownership notification provided pursuant to paragraph (e)(4)(i)(B) of this section, the withholding agent is required to withhold under section 1441, 1442, or 1443 on a payment of interest made after the withholding agent has received the notification unless such form or statement (or a statement that the beneficial owner of the obligation is no longer a U.S. person) is received before the interest payment date from the person who provided the notification (or transferee). If, during the period beginning on the next January 15 and ending on the next January 31, such person certifies as set out in paragraph (e)(3)(i) of this section (subject to paragraph (e)(3)(i)(A)(2) of this section) then the withholding agent is not required to withhold during the year following such certification (unless such person again provides a U.S. beneficial ownership notification without attaching a Form W-9 or substitute form that is substantially similar to Form W-9 and completed under penalties of perjury or the statement described in paragraph (e)(4)(i)(C) of this section).

(E) *Procedures for clearing organizations.* Within the period beginning 10 days before the end of the calendar quarter and ending on the last day of each calendar quarter, any clearing organization (including a clearing organization that is a withholding agent)

relying on annual certificates or statements from its member organizations, as set forth in paragraph (e)(3)(i) of this section, must send each member organization having submitted such certificate or statement a reminder that the member organization must give the clearing organization a U.S. beneficial ownership notification in the circumstances described in paragraph (e)(4)(i)(B) of this section.

(F) *Retention of certificates.* The certificate described in paragraph (e)(3)(i) of this section must be retained in the records of the withholding agent for four years from the end of the calendar year in which it was received. The statement described in paragraph (e)(3)(i) of this section that is received by a clearing organization from a member organization must be retained in the records of the clearing organization for four years from the end of the calendar year in which it was received.

(G) *No reporting requirement.* The withholding agent who receives the certificate described in paragraph (e)(3)(i) of this section is not required to file Form 1042S to report payments under § 1.1461-1 (b) or (c) of interest that are made with respect to foreign-targeted registered obligations held by the person providing the certificate and are made within the period beginning with the certificate date and ending on the last date for filing the next certificate.

(ii) *Procedures regarding certificates required under paragraph (e)(3)(ii) of this section—(A) Time for providing certificate.* The statement described in paragraph (e)(3)(ii) of this section must be provided to the withholding agent within the period beginning 90 days prior to and ending on the first interest payment date on which the withholding agent pays interest to the beneficial owner. The withholding agent may, in its discretion, withhold under section 1441(a), 1442(a), or 1443 if the statement is not received by the date 30 days prior to the interest payment. The beneficial owner must confirm to the withholding agent the continuing validity of the documentary evidence within the period beginning 90 days prior to the first day of the third calendar year following the provision of

such evidence and during the same period every three years thereafter while the owner still owns the obligation. The withholding agent who receives the statement described in paragraph (e)(3)(ii) of this section is not required to report payments of interest under § 1.1461-1(b) or (c) if the payments are made with respect to foreign-targeted registered obligations held by the person who provides the statement and are made within the period beginning with the date on which the statement is provided and ending on the last date for confirming the validity of the statement. The statement received for purposes of paragraph (e)(3)(ii) of this section is subject to the applicable procedures set forth in § 1.1441-1(e)(4).

(B) *Change of status notification on Form W-9.* If on any interest payment date after the obligation was acquired by the person providing the statement described in paragraph (e)(3)(ii) of this section, the beneficial owner of the obligation is a U.S. person, then the beneficial owner must so inform the withholding agent within 30 days after such interest payment date and must provide a Form W-9 (or substitute form that is substantially similar completed under penalties of perjury) to the withholding agent. However, the beneficial owner is not required to provide another Form W-9 (or substitute form that is substantially similar and completed under penalties of perjury) if such person has already provided it to the withholding agent within the same calendar year.

(iii) *Disqualification of documentation.* In accordance with the provisions of section 871(h)(4), the Secretary may make a determination in appropriate cases that a certificate or statement by any person, or class of persons, does not satisfy the requirements of that section. Should that determination be made, all payments of interest that otherwise qualify as portfolio interest to that person would become subject to 30-percent withholding under section 1441(a), 1442(a), or 1443.

(iv) *Special effective date.* Notwithstanding the foregoing requirements of this section—

(A) Any certificate that is required to be filed with the withholding agent during the period beginning on Janu-

ary 15 and ending on January 31, 1986, is not required to state that the beneficial owner of an obligation, prior to the date of the certificate, either was not a United States person or was a United States person if the obligation was acquired by the person providing the certificate on or before September 19, 1985; and

(B) All of the requirements of this paragraph (e), as in effect prior to the effective date of these amendments, shall remain effective with respect to each interest payment prior to the filing of the certificate described in paragraph (e)(4)(iv)(A) of this section, except that the provisions of paragraph (e)(3) of this section relating to which persons are required to receive certificates or statements and paragraph (e)(3)(ii) or (4)(ii) of this section shall become effective with respect to each interest payment after September 20, 1985.

(5) *Information reporting.* See § 1.6049-5(b)(7) for special information reporting rules applicable to interest on foreign-targeted registered obligations. See § 1.6045-1(g)(1)(ii) for information reporting rules applicable to the redemption, retirement, or sale of foreign-targeted registered obligations.

(f) *Securities lending transactions.* For applicable rules regarding substitute interest payments received pursuant to a securities lending transaction or a sale-repurchase transaction, see §§ 1.871-7(b)(2) and 1.881-2(b)(2).

(g) *Portfolio interest not to include interest received by 10-percent shareholders—(1) In general.* For purposes of section 871(h), the term *portfolio interest* shall not include any interest received by a 10-percent shareholder.

(2) *Ten-percent shareholder—(i) In general.* The term *10-percent shareholder* means—

(A) In the case of an obligation issued by a corporation, any person who owns 10-percent or more of the total combined voting power of all classes of stock of such corporation entitled to vote; or

(B) In the case of an obligation issued by a partnership, any person who owns 10-percent or more of the capital or profits interest in such partnership.

(ii) *Ownership—(A) Stock ownership.* For purposes of paragraph (g)(2)(i)(A)

of this section, *stock owned* means stock directly or indirectly owned and stock owned by reason of the attribution rules of section 318(a), as modified by section 871(h)(3)(C).

(B) *Ownership of partnership interest.* For purposes of paragraph (g)(2)(i)(B) of this section, rules similar to the rules in paragraph (g)(2)(ii)(A) of this section shall be applied in determining the ownership of a capital or profits interest in a partnership.

(3) *Application of 10-percent shareholder test to partners receiving interest through a partnership—(i) Partner level test.* Whether interest paid to a partnership and included in the distributive share of a partner that is a nonresident alien individual or foreign corporation is received by a 10 percent shareholder shall be determined by applying the rules of this paragraph (g) only at the partner level.

(ii) *Time at which 10-percent shareholder test is applied.* The determination of whether a nonresident alien individual or foreign corporation that is a partner in a partnership is a 10-percent shareholder under the rules of section 871(h)(3), section 881(c)(3), and this paragraph (g) with respect to interest paid to such partnership shall be made at the time that the withholding agent, absent the provisions of section 871(h), 881(c) and the rules of this paragraph, would otherwise be required to withhold under sections 1441 and 1442 with respect to such interest. For example, in the case of U.S. source interest paid by a domestic corporation to a domestic partnership or withholding foreign partnership (as defined in §1.1441-5(c)(2)), the 10-percent shareholder test is applied when any distributions that include the interest are made to a foreign partner and, to the extent that a foreign partner's distributive share of the interest has not actually been distributed, on the earlier of the date that the statement required under section 6031(b) is mailed or otherwise provided to such partner, or the due date for furnishing such statement. See §1.1441-5(b)(2) and (c)(2)(iii).

(4) *Application of 10-percent shareholder test to interest paid to a simple trust or grantor trust.* Whether interest paid to a simple trust or grantor trust and distributed to or included in the

gross income of a nonresident alien individual or foreign corporation that is a beneficiary or owner of such trust, as the case may be, is received by a 10-percent shareholder shall be determined by applying the rules of this paragraph (g) only at the beneficiary or owner level. The 10-percent shareholder test is applied with respect to a nonresident alien individual or foreign corporation that is a beneficiary of a simple trust or an owner of a grantor trust at the time that a withholding agent, absent any exceptions, would otherwise be required to withhold under sections 1441 and 1442 with respect to such interest.

(h) *Definitions.* For purposes of this section, the terms *U.S. person* and *foreign person* have the meaning set forth in §1.1441-1(c)(2), the term *beneficial owner* has the meaning set forth in §1.1441-1(c)(6), the term *withholding agent* has the meaning set forth in §1.1441-7(a); the term *payee* has the meaning set forth in §1.1441-1(b)(2); and the term *payment* has the meaning set forth in §1.1441-2(e).

(i) *Effective date—(1) In general.* This section shall apply to payments of interest made after December 31, 2000. The rules of paragraph (g) apply to interest paid after April 12, 2007. Taxpayers may choose to apply the rules of paragraph (g) to interest paid in any taxable year not closed by the period of limitations as of April 12, 2007, provided they do so consistently for all relevant partnerships during such years.

(2) *Transition rule.* For purposes of this section, the validity of a Form W-8 that was valid on January 1, 1998, under the regulations in effect prior to January 1, 2001 (see 26 CFR parts 1 and 35a, revised April 1, 1999) and expired, or will expire, at any time during 1998, is extended until December 31, 1998. The validity of a Form W-8 that is valid on or after January 1, 1999 remains valid until its validity expires under the regulations in effect prior to January 1, 2001 (see 26 CFR parts 1 and 35a, revised April 1, 1999) but in no event will such a form remain valid after December 31, 2000. The rule in this paragraph (h)(2), however, does not apply to extend the validity period of a Form W-8 that expired solely by reason



of changes in the circumstances of the person whose name is on the certificate. Notwithstanding the first three sentences of this paragraph (h)(2), a withholding agent or payor may choose to not take advantage of the transition rule in this paragraph (h)(2) with respect to one or more withholding certificates valid under the regulations in effect prior to January 1, 2001 (see 26 CFR parts 1 and 35a, revised April 1, 1999) and, therefore, may choose to obtain withholding certificates conforming to the requirements described in this section (new withholding certificates). For purposes of this section, a new withholding certificate is deemed to satisfy the documentation requirement under the regulations in effect prior to January 1, 2001 (see 26 CFR parts 1 and 35a, revised April 1, 1999). Further, a new withholding certificate remains valid for the period specified in § 1.1441-1(e)(4)(ii), regardless of when the certificate is obtained.

(3) [Reserved] For further guidance, see § 1.871-14T(i)(3).

[T.D. 8734, 62 FR 53416, Oct. 14, 1997, as amended by T.D. 8804, 63 FR 72184, 72187, Dec. 31, 1998; T.D. 8856, 64 FR 73409, 73412, Dec. 30, 1999; T.D. 9323, 72 FR 18387, Apr. 12, 2007; 72 FR 26543, May 10, 2007. T.D. 9658, 79 FR 12746, Mar. 6, 2013]

**§ 1.871-14T Rules relating to repeal of tax on interest of nonresident alien individuals and foreign corporations received from certain portfolio debt investments (temporary).**

(a) [Reserved] For further guidance, see § 1.871-14(a).

(b) *Rules concerning obligations in bearer form before March 19, 2012—(1) In general.* Interest (including original issue discount) with respect to an obligation in bearer form is portfolio interest within the meaning of section 871(h)(2)(A) or 881(c)(2)(A) only if it is paid with respect to an obligation issued after July 18, 1984, and issued before March 19, 2012, that is described in section 163(f)(2)(B), as in effect prior to the amendment by section 502 of the Hiring Incentives to Restore Employment Act of 2010 (HIRE Act), Public Law 111-147, and the regulations under that section and an exception under section 871(h) or 881(c) does not apply. Any obligation that is not in registered form as defined in paragraph (c)(1)(i) of

this section is an obligation in bearer form.

(2) *Coordination with withholding and reporting rules.* For an exemption from withholding under section 1441 with respect to obligations described in this paragraph (b), see § 1.1441-1(b)(4)(i). See § 1.1471-2 for rules relating to withholding under chapter 4 of the Code that may apply to withholdable payments (as defined in § 1.1471-4(b)(145)) made on or after July 1, 2014, with respect to an agreement or instrument that is not treated as an obligation outstanding before March 19, 2012. For purposes of the preceding sentence, the terms *obligation* and *outstanding* are described in § 1.1471-2(b)). See also § 1.1471-4(d)(6) for the reporting requirements of participating foreign financial institutions (as defined in § 1.1471-1(b)(91)) with respect to accounts held by recalcitrant account holders (as defined in § 1.1471-5(g)). For rules relating to an exemption from Form 1099 reporting and backup withholding under section 3406, see section 6049 and § 1.6049-5(b)(8) for the payment of interest and § 1.6045-1(g)(1)(ii) for the redemption, retirement, or sale of an obligation in bearer form.

(c)(1) through (c)(1)(ii)(D) [Reserved] For further guidance, see § 1.871-14(c)(1) introductory text through (c)(1)(ii)(D).

(2) *Required statement.* For purposes of paragraph (c)(1)(ii)(C) of this section, a U.S. person will be considered to have received a statement that meets the requirements of section 871(h)(5) if either it complies with one of the procedures described in this paragraph (c)(2) and does not have actual knowledge or reason to know that the beneficial owner is a U.S. person or it complies with the procedures described in paragraph (d) or (e) of this section (to the extent applicable).

(i) The U.S. person (or its authorized agent described in § 1.1441-7(c)(2)) can reliably associate the payment with documentation upon which it can rely to treat the payment as made to a foreign beneficial owner in accordance with § 1.1441-1(e)(1)(ii). See § 1.1441-1(b)(2)(vii) for rules regarding reliable association with documentation.

(ii) The U.S. person (or its authorized agent described in § 1.1441-7(c)(2)) can